TRUSTS — BREACH OF TRUST — WETMORE *v.* PORTER. — In an action by an executrix upon a promissory note, *held*, that evidence is inadmissible tending to show that the money for which this note was given was loaned by the executrix in a collusive attempt to defraud the estate. *Atwood* v. *Lister*, 40 Atl. Rep. 866 (R. I.).

The question, whether a trustee who has wrongfully disposed of trust property may maintain an action for its recovery as trustee has given rise to much difference of opinion. The decision in the principal case is in accord with the weight of authority. It is based upon the reasoning in *Wetmore* v. *Porter*, 92 N. Y. 76. See 12 HARV. LAW REV. 133.

REVIEWS.

THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION. By E. Parmalee Prentice and John G. Egan. Chicago: Callaghan & Co. 1898. pp. lxxv, 386.

Shifting tendencies and the general development of law — hard as they may be to treat in a condensed work — cannot with any propriety be left out of an exhaustive special treatise. This fact the authors of the present work realized, and they have carefully carried out the treatment of their special subject, historically and analytically. The book embodies an effort, in the main successful, to take the point of view of the Supreme Court of the United States in regard to the so-called "Commerce Clause," to show how this point of view has changed with time, and how it has varied in the manifold different classes of cases involving the power to regulate commerce.

The aim of the framers of the clause is shown in its true light. They meant to give Congress power to prevent one State from enacting tariffs discriminating against the others and from passing navigation laws. No one thought the federal control was made exclusive; in fact a provision to make it so was struck out by the convention. All this the authors concede. They justify the doctrine of exclusive federal control by the general development of the country in ways wholly uncontemplated, accentuated by a change in the relation of the States after the civil war. p. 35. These are the best explanations which the school of Marshall adopt. To the school of Kent and Taney they are not so convincing.

In stating the modern rule, that the control of commerce belongs exclusively to Congress in all matters admitting of uniform treatment, the authors are right, p. 27; but they make an unfortunate slip in assuming that this was the rule laid down by Mr. Justice Curtis in *Cooley* v. *Wardens of the Port of Philadelphia*, 12 How. 299. The doctrine of that case was that federal control is exclusive in matters which admit *only* of uniform treatment. The misconception of that rule has been shared by the courts. The consequent broadening of the exclusive power restricted the States to such an impossible extent that considerable sophistry had to be evolved in support of some State laws by means of narrowing the definition of a "regulation" of commerce. Hence a drift back towards a broader rule. Though the cause is ignored, the effect is noted. p. 206. Indeed, the authors are somewhat inclined to admit the difficulty of saying that all the State regulations of carriers which have been upheld are not regulations of commerce. p. 164. Yet, granted the modern rule with its modifications, it is very justly treated in connection with a great number of different circumstances.

Nor is federal legislation about commerce neglected. The ancient "Preference Clause," the modern Interstate Commerce Commission, and the Anti-Trust Act of 1890 are considered. The last act, and its interpretation in the Trans-Missouri case, are discussed and condemned. The case of the Kansas City Live Stock Exchange is supported as decided in the lower court, — a little unlucky now that the decision has been reversed. See 12 HARVARD LAW REVIEW, 278. Finally the control of commerce with the territories and with Indian tribes is well reviewed. It is satisfactory to note that unlimited power over the territories is advocated, although the case cited does not wholly bear out the proposition, p. 305. *Endleman* v. *United States*, 86 Fed. Rep. 456. The chapter on Indians ends a work which, in view of the difficulty of the subject, deserves commendation. Not the least valuable result is in showing that all the cases cannot be reconciled. J. G. P.

THE GENERAL PRINCIPLES OF CONSTITUTIONAL LAW IN THE UNITED STATES OF AMERICA. By Thomas M. Cooley. Third edition, by Andrew C. McLaughlin. Boston: Little, Brown, & Co. 1898. pp. li, 423.

The good taste of remodelling the text of a book written by another is somewhat open to question but the editor of the third edition of Judge Cooley's admirable little book has sinned no more than was necessary from the nature of the course that he adopted. A sentence occasionally inserted, a new turn of phrase, have generally sufficed to bring the statements of the law into line with modern decisions. Constitutional law grows, as grow it must, and changes in wording were necessary in order to keep the book an authentic text book. Since the last edition appeared, the Supreme Court of the United States has passed for the first time on the citizenship of a Chinaman born of alien parents in this country, when he returns from a visit to China, and on the constitutionality of State legislation prescribing an eight hour limit to the laborers' day. Old rules, too, have put on new faces; as where the theory that only land and capitation taxes can be direct gave way to a decision that a tax on incomes might also be direct. All this, and more, the compiler of the new edition notes.

Two parts of the book are substantially rewritten. One of them is a new chapter on state constitutions, virtually a condensation of two chapters in Judge Cooley's Constitutional Limitations. The other is the chapter on the control of interstate commerce. The first edition dealt with the subject by merely discussing the successive decisions. As cases grew more numerous this method became impossible, and the editor takes the only other course possible, generalizing and referring to the cases. For this method the subject of interstate commerce is a mare's nest; and the shortcoming of the present treatment lies in the attempt to see in each case a part of a consistent whole. The reconciling of the recent refinements upon *Leisy* v. *Hardin*, 135 U. S. 100, is a thankless task. p. 77, note 2.

This natural desire to look upon the law as a present fixed code is the one flaw that mars the fairness of the editor's work. The important decisions above referred to, and more, are faithfully recorded. In a work of this size many cases must of necessity be discarded; lack of